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PARRISH, DANIEL

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.  
W.A. DREW EDMONDSON, in his capacity as  
ATTORNEY GENERAL OF THE STATE OF  
OKLAHOMA, and OKLAHOMA SECRETARY  
OF THE ENVIRONMENT C. MILES TOLBERT,  
in his capacity as the TRUSTEE FOR NATURAL  
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

vs.

No. 05-CV-0329 GFK-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,

TYSON CHICKEN, INC., COBB-VANTRESS, INC.,  
AVIAGEN, INC., CAL-MAINE FOODS, INC.,  
CAL-MAINE FARMS, INC., CARGILL, INC.,  
CARGILL TURKEY PRODUCTION, LLC,  
GEORGE'S, INC., GEORGE'S FARMS, INC.,  
PETERSON FARMS, INC., SIMMONS FOODS, INC.,  
and WILLOW BROOK FOODS, INC.,

Defendants.

VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH

TAKEN ON BEHALF OF THE DEFENDANTS

ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.

IN OKLAHOMA CITY, OKLAHOMA

Videographer: Stephanie Britton

Reported by: Lana L. Phillips, CSR, RPR

Exhibit 7

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1 Agency, and has a number of times.

2 Q All right. Could you provide a  
3 brief overview of the program to which the land  
4 application of poultry litter is controlled in  
5 the state of Oklahoma?

6 A A brief overview of poultry waste  
7 application would be that anybody who applies  
8 poultry waste are required to have a poultry  
9 waste applicator's license with the Oklahoma  
10 Department of Agriculture, Food, and Forestry, by  
11 law. Then when they submit their document to us  
12 for a license, then they are required to adhere  
13 to the Poultry Feeding Operations Act, poultry  
14 permanent rules, and the Poultry Waste  
15 Applicators Act and rules.

16 And there's numbers of things  
17 involved in that, if you want me to go on.

18 Q We'll go into them in detail.  
19 That's what I wanted, was just the basic  
20 framework.

21 So everyone who land-applies poultry  
22 litter has to be registered -- and would it be  
23 appropriate to say licensed through your  
24 division?

25 A Everyone who land-applies poultry

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1 waste by law is required to receive a poultry  
2 license from the Oklahoma Department of  
3 Agriculture, Food, and Forestry.

4 Q All right. And there are rules and  
5 -- there are rules in effect in Oklahoma that  
6 dictate where, when, and how poultry litter can  
7 be land-applied also; correct?

8 A Yes.

9 Q And your division is responsible for  
10 oversight of the -- of those rules and their  
11 implementation; correct?

12 A The AEMS division at the Department  
13 of Agriculture is responsible for oversight, but  
14 clearly do not have enough staff and budget to  
15 even begin to oversight what we need to.

16 Q Your division has field inspectors;  
17 correct?

18 A Yes.

19 Q Now, what are the primary objectives  
20 of the litter utilization program that your  
21 division administers?

22 A The primary objectives are, by law,  
23 to ensure that poultry waste is applied at  
24 agronomic rates, applied so that the crop that is  
25 on the field where it's applied to can uptake the

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1 nutrients from the waste.

2 There's numbers of other documents  
3 that are required to be submitted. And at this  
4 stage, I'll stop, and I'm assuming we'll get into  
5 those -- unless you want me to go further.

6 Q Is one of the objectives of the  
7 regulatory program over poultry litter to protect  
8 the state of Oklahoma's waters?

9 A Yes.

10 Q Is one of the objectives of the  
11 program regulating utilization of poultry litter  
12 in Oklahoma to protect the environment?

13 A Yes.

14 And by law, it's called "poultry  
15 waste." Not to disagree with you, but it's  
16 called "poultry waste," so I'll refer to it as  
17 "poultry waste." I'm assuming when you're saying  
18 "litter," we're talking about one and the same.

19 Q All right. Fair enough. If I use  
20 the term "poultry waste," then we'll assume that  
21 I'm referring to the term as defined in the  
22 statute and the regulations that your division  
23 administers.

24 Would that avoid any confusion?

25 A Yes. And in the law it refers to

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1 of the Illinois River watershed registered with  
2 your division?

3 A To my knowledge, yes, they are. But  
4 we do not have enough staff or budget that we've  
5 spent time going up and down the road to make  
6 sure every one of them is.

7 Q All right. So there's a possibility  
8 there could be one tucked away somewhere you  
9 don't know about, but the fact is you just don't  
10 know if that's true or not true?

11 A That is right. And I say that only  
12 because last year we found one, not in the  
13 Illinois River watershed, but we found one that  
14 hadn't been registered since this Act was put  
15 into effect. So that's why I would be hesitant.

16 Q All right. Let's go next over to  
17 Section 10-9.5. It's titled Application to  
18 Register or Expand Poultry Operation.

19 A Yes, I'm there.

20 Q All right. Sub section B says:  
21 "The application to register to operate a new or  
22 previously unregistered poultry feeding operation  
23 or expanding operation shall contain certain  
24 information."

25 And then the statute lists a number

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1 Q All right. "Integrator" is also a  
2 defined term in the Act; correct?

3 Let's look at 10-9.1.B.13, please.

4 A Yes.

5 Q Sir, would you kindly read the  
6 statutory definition of the term "integrator"?

7 A The document that you gave me of the  
8 Oklahoma Registered Poultry Feeding Operations  
9 Act, 10-9.1.B.13, "'Integrator" means an entity  
10 which unites the elements associated with the  
11 poultry industry, including but not limited to  
12 hatching, feeding, processing, and marketing. It  
13 includes but is not limited to situations when  
14 growing is contracted out to others and when the  
15 integrator operates its own growing facilities."

16 Q All right. Thank you.

17 Are you aware of circumstances, sir,  
18 in Oklahoma where an integrator is also a  
19 registrant or the registered owner or operator of  
20 a poultry feeding operation?

21 A Yes. There are circumstances in our  
22 records that have been submitted to the AEMS  
23 division that are that way, where integrators are  
24 listed as owner and/or operator.

25 Q And in your experience, does that --

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1 what does that mean in practical terms? Does  
2 that mean the integrator owns and operates the  
3 poultry farm?

4 A Based upon the records that have  
5 been submitted to us, with page 3 being an oath  
6 page that they have to have notarized, that is  
7 the way it's submitted to us, that the integrator  
8 is the owner and/or operator.

9 Q All right. That circumstance you  
10 just described, that is separate and distinct  
11 from a situation where the farm is owned and  
12 operated by a contract poultry grower; right?

13 A I wouldn't define it as separate and  
14 distinct. We treat it the same as we would any  
15 Oklahoma registered poultry feeding operation.

16 To say it's distinct, it may be  
17 distinct from the poultry company's standpoint;  
18 but from the Department of Agriculture  
19 standpoint, it's not distinct.

20 Q All right. I understand your  
21 answer. You're saying you regulate them and  
22 treat them the same.

23 Is that what your answer meant, sir?  
24 I mean, from a regulatory standpoint, you don't  
25 see a difference?

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1           A       My answer is -- I'm not disagreeing  
2       with your words, but I would like to put them in  
3       my own words.

4                   My answer is the AEMS division sees  
5       no distinction between whether they're owned by a  
6       integrator or whether they're owned by a contract  
7       operation. Our rules and regulations refer to  
8       registered poultry feeding operations.

9           Q       I understand. The set of rules  
10       applies equally to both sets of circumstances.

11                   That's what you're telling me?

12          A       Yes. That is correct.

13          Q       All right. My question was not from  
14       a regulatory standpoint. It was sort of a  
15       practical standpoint. You have one feeding  
16       operation owned and operated by a contract  
17       grower, is one real world situation, versus a  
18       separate farm that is owned and operated by an  
19       integrator.

20                   In the real world, those are  
21       distinct situations, but in your division's eyes  
22       you regulate them both under the same sets of  
23       rules; correct?

24                   MR. GARREN: Object as to form.

25                   THE WITNESS: I would assume from



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1     furnishing the birds and the feed and most all of  
2     them to those contract operations. Two, we send  
3     copies of our compliance letters to the  
4     integrating company when there are compliance  
5     letters.

6                     So it would be for both. One, so we  
7     could also change the -- who we're sending the  
8     letters to; and two, so we could know who's  
9     furnishing the birds and feed to the contract  
10    growers.

11                    Q     You said -- in your answer, you  
12    referred to a compliance letter.

13                             Can you tell me what you mean by  
14    that?

15                    A     Oh, there are numerous things. Any  
16    matter that we are able to find either by  
17    inspections or by submittals to our office, of  
18    where we believe they may not be in compliance to  
19    the law, then we can send letters to them to  
20    require corrective actions and/or submit it to  
21    the office of general counsel to go a step  
22    further and do fines.

23                    Q     All right. In a case where a  
24    contract poultry grower is the owner/operator of  
25    the registered feeding operation, if the

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1 compliance issue relates to the operation of that  
2 farm, do you send the compliance letter to that  
3 contract poultry grower and then send a copy to  
4 the integrator? What's the procedure that you  
5 use?

6 A Yes, that is correct. The letter  
7 for compliance issues of when a contract grower  
8 is the one that's listed as the owner of the  
9 facility, the compliance letter is sent to him,  
10 with a copy of it sent to the integrating company  
11 that is listed in our files that have been  
12 submitted by the owner of the poultry operation.

13 Q And if the -- if the situation  
14 you're presented with involves the management of  
15 poultry waste at the site of the feeding  
16 operation and that's what the compliance issue  
17 relates to, the violation, so to speak, is the  
18 violation of the owner/operator of the facility.

19 That's who you're looking to, to  
20 correct the noncompliance situation; correct?

21 A The answer is that's who the letter  
22 is addressed.

23 But the reason why we also send a  
24 copy to the integrating company is the  
25 integrating company furnishes the birds and the

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1 feed; and if there is a problem with waste, waste  
2 is generated from the bird that's furnished by  
3 the company -- that puts out the manure or the  
4 waste.

5 So that's why a copy is sent to the  
6 integrating company also.

7 Q Is -- if a contract poultry grower  
8 fails to come into compliance when so demanded by  
9 your division, is the integrator required to stop  
10 delivering flocks of birds to that contract  
11 poultry grower?

12 A There are some matters in the  
13 Oklahoma Registered Poultry Feeding Operations  
14 Act where that is the case. That deals with  
15 education from a standpoint of application that  
16 we're referring to of poultry waste.

17 The answer is no, but we have made  
18 phone calls or sent letters asking for assistance  
19 in that area that you're referring to.

20 Q And in your experience, when your  
21 division has made that request of an integrator,  
22 have you received cooperation from the  
23 integrator?

24 A Some integrators we have; some  
25 integrators we have not.

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1 Well, Section 35 -- or Title 35,  
2 Section 17-5-1, is titled Purpose; correct?

3 A Yes.

4 Q All right. It says: "These rules  
5 shall serve to control nonpoint source runoff and  
6 discharges from poultry waste application of  
7 poultry feeding operations. The rules allow for  
8 the monitoring of poultry waste application to  
9 land or removal from these operations and assist  
10 in ensuring beneficial use of poultry waste while  
11 preventing adverse effects to the waters of the  
12 state of Oklahoma." Period.

13 You agree with that statement, sir,  
14 that I just read?

15 A Yes. That statement is the Purpose  
16 of 35:17-5-1.

17 Q All right. So these rules  
18 applicable to these poultry growers serve to,  
19 one, control nonpoint source runoff from -- of  
20 poultry waste.

21 Agreed?

22 A Yes.

23 Q Two, they ensure the beneficial use  
24 of poultry waste while preventing adverse  
25 effects.

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1 provisions of Section 7 of this Act."

2 Q All right, sir. You would agree,  
3 according to the legislative statement in the  
4 Registered Poultry Feeding Operations Act, an  
5 animal waste management plan must be designed to  
6 protect the natural resources of the state;  
7 right?

8 A Yes.

9 Q All right. Now, let's go back, sir,  
10 to Section 10-9.7.

11 Generally speaking, sir, what is the  
12 purpose of an animal waste management plan?

13 A Executive summary purposes of an  
14 animal waste management plan is to identify and  
15 spell out specifically how the wastes are going  
16 to be handled from that specific operation.

17 Q All right. Let's go to the  
18 regulations, Exhibit 2, and the second page of  
19 that exhibit. So that would be Title 35, Section  
20 17-5-3, Subsection (b), on Animal Waste  
21 Management Plan.

22 Are you there with me, sir?

23 A Yes, I am.

24 Q All right. I want to look down to  
25 Subsection (3), where it says: "The Animal Waste

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1 Management Plan shall be prepared by USDA NRCS or  
2 an entity approved by the State Department of  
3 Agriculture."

4 Did I read that correctly?

5 A Yes, you did.

6 Q Can you tell us, sir, what USDA NRCS  
7 stands for?

8 A United States Department of  
9 Agriculture, Natural Resources Conservation  
10 Service.

11 Q What is the Natural Resources  
12 Conservation Service?

13 A It is a division of the United  
14 States Department of Agriculture that is involved  
15 in conservation practices mainly for agriculture,  
16 to my knowledge.

17 Q And within the broad term  
18 "conservation practices," the NRCS also involves  
19 itself in environmental practices related to  
20 agricultural operations as well; correct?

21 A NRCS involves itself in  
22 environmental practices, but makes it very clear  
23 that they're not involved in any of the  
24 regulatory issues.

25 Q All right. But one -- what I meant,

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1 sir, so let me clarify this question, is, one of  
2 the areas that the NRCS is involved in is helping  
3 to minimize or prevent adverse environmental  
4 impacts from agricultural operations?

5 A In my discussions with NRCS  
6 personnel and looking at their documents, I would  
7 agree with that statement.

8 Q All right. Now, the rules require  
9 that these animal waste management plans be  
10 prepared by NRCS or an entity approved by the  
11 State Department of Agriculture.

12 In the practical sense, who is in  
13 fact writing these plans?

14 A Plans have been written by USDA  
15 Natural Resources Conservation Services personnel  
16 in each county. They've also been written by two  
17 part-time soil scientists that the Department has  
18 under contract.

19 Q Okay. So those are the two primary  
20 resources for a poultry operator: Either come to  
21 your division and have one of the soil scientists  
22 prepare a plan, or go to the county NRCS office  
23 and have someone prepare the plan.

24 Is that what I'm understanding?

25 A To my knowledge, that has been the

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1 infiltration through a sinkhole or at a well?

2 A Yes. And by sticking to the hundred  
3 feet of a perennial stream, pond, well, or  
4 sinkhole, it would -- by sticking to that and  
5 not applying manure, it would help reduce the  
6 problem of what you just referred to.

7 Q I mean, don't we need to -- don't we  
8 need to acknowledge that there is virtually no  
9 way to set up a zero loss scenario in  
10 agriculture?

11 A It would be especially challenging  
12 in Eastern Oklahoma, where there are lots of  
13 rocks and lots of hills and lots of other  
14 problems. It would be very challenging.

15 Q All right. The next bullet point:  
16 "To areas within 50 feet of an intermittent  
17 stream, unless an established buffer strip is  
18 present." It says: "The width of the buffer  
19 strip will be used as a setback distance for  
20 application purposes. The buffer strip must meet  
21 the requirements for design and maintenance  
22 established in the appropriate NRCS buffer  
23 standard and specification."

24 All right. Help me understand. In  
25 practical terms, what does that mean?



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1 Plus two more sentences are there,  
2 about wetness, and mentions highly vulnerable  
3 groundwater again.

4 Q Okay. So for Mr. Saunders, I have  
5 -- in this animal waste management plan, I have  
6 some criteria that address all of my fields, that  
7 address areas near streams, ponds, water wells,  
8 and I have criteria here that address my steep  
9 sloping land, and to address my land that is  
10 seasonally wet.

11 I have something to refer to in this  
12 plan, as far as telling me how to handle my  
13 poultry waste related to those lands; correct?

14 A That is correct.

15 But it's only based upon this animal  
16 waste management plan document. There are more  
17 regulations than just the plan.

18 Q Under the statutory program, as well  
19 as the plan, the registered poultry feeding  
20 operators are required to maintain records of the  
21 disposition of the poultry waste generated on  
22 their farms; correct?

23 A Yes.

24 Q And if they land-apply it on their  
25 own land, they're supposed to record that;

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1           A       These plans provide guidance of how  
2       they should use their poultry waste, and then  
3       there are other guidance they should also refer  
4       to besides these plans.

5           Q       But you agree that trained  
6       authorized personnel either for -- working for  
7       NRCS or working for ODAFF, have prepared a  
8       document that specifically tells them what the  
9       allowable rate of litter application is on any  
10      field upon which they intend to use poultry  
11      waste?

12                    You agree?

13          A       These documents tell that poultry  
14      operation the guidelines they should use in  
15      applying their waste. But just as me with my  
16      driver's license, it doesn't give me everything  
17      that I am required to do when I'm driving my car.

18          Q       But you expect poultry growers to  
19      follow these animal waste management plans?

20                    That's what the law says, doesn't  
21      it?

22          A       Follow those waste management plans,  
23      to follow the Oklahoma water quality standards.  
24      I can give you a whole list of things that they  
25      have to -- in addition to that, that they have to

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1     adhere to, just as I have to do with my driver's  
2     license.

3             Q       Now, the regulated persons who are  
4     required to have animal waste management plans,  
5     those are the owners and operators of the  
6     registered feeding operations; correct?

7             A       The law requires that the owners of  
8     a Oklahoma registered poultry feeding operation  
9     have an animal waste management plan or proof  
10    that they've applied for an animal waste  
11    management plan.

12            Q       Has ODAFF ever required a poultry  
13    integrator to obtain an animal waste management  
14    plan?

15            A       Yes.

16            Q       Has ODAFF ever required a poultry  
17    integrator to obtain an animal waste management  
18    plan in the Illinois River watershed?

19            A       I don't have memorized anybody  
20    that's a registered poultry operation in the  
21    Illinois River watershed would have to get that  
22    plan -- whether there are poultry integrators who  
23    have operations owned by them in the Illinois  
24    River watershed, I don't have that list  
25    memorized.

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1 scope of your group would include complaints  
2 related to the use of poultry litter; correct?

3 A Yes.

4 Q Now, I think you covered this to a  
5 certain degree when we were talking about the  
6 water well hypothetical.

7 But if a registered poultry feeding  
8 operator is violating the Act, what steps are  
9 available to you and ODAFF to take corrective  
10 action?

11 A When it is determined by our  
12 assessment that they are in violation of the law,  
13 then we can take actions, including corrective  
14 actions, including fines. Those are our general  
15 that we can do.

16 However, we have four and a half --  
17 "half" because that person is a half CAFO, half  
18 poultry -- four and a half inspectors to inspect  
19 and investigate, for many registered poultry  
20 operations, anything dealing with poultry,  
21 whether it's applicators. And we do not begin to  
22 have enough staff or enough budget to even begin  
23 to enforce the rules and the regulations.

24 Q All right. Well, I'm -- I have to  
25 move to strike that last part of your answer, as

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1 waste be disposed of in a permitted landfill,  
2 rather than land-applied?

3 MR. GARREN: Object to form,  
4 predicate, foundation.

5 THE WITNESS: I'm not aware of, only  
6 because I've not had discussions with other state  
7 regulatory people about that subject matter.

8 Q (BY MR. McDANIEL) Are you aware of  
9 any poultry -- registered poultry feeding  
10 operator in the Illinois River watershed who is  
11 currently operating in violation of his or her  
12 animal waste management plan?

13 MR. GARREN: Again, objection as to  
14 form.

15 THE WITNESS: I can't answer that  
16 question, because we don't have enough staff for  
17 me to be able to answer that question -- that we  
18 are doing constant inspections and testing all  
19 that. I could not answer that question simply  
20 because we do not have enough people or budget to  
21 be able to determine an answer to that question.

22 Q (BY MR. McDANIEL) All right, sir.  
23 And I've got to move to strike that answer.

24 The question was, sir, are you aware  
25 of any poultry -- registered poultry feeding

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1 operator in the Illinois River watershed who is  
2 currently operating in violation of his or her  
3 animal waste management plan?

4 If you can answer it yes or no, I  
5 request that you do so.

6 MR. GARREN: Same objection.

7 THE WITNESS: I cannot answer it yes  
8 or no.

9 Q (BY MR. McDANIEL) You can't tell me  
10 what you're aware of?

11 A I can't answer if anyone is in  
12 violation of our laws and rules, because I'm not  
13 out to every operation every day, nor is our  
14 staff out to every operation every day.

15 There's not enough state troopers to  
16 pick up everybody that's speeding on the roads.

17 Q I understand that point, sir, and  
18 it's been made multiple times by you.

19 My question is: Are you aware of  
20 any operator -- poultry operator in the watershed  
21 that is currently in violation of their plan?

22 A I am not aware of any today. But  
23 that answer can only be said by saying that we do  
24 not have enough staff to be able to determine  
25 that on a daily, hourly basis.